

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	2.1.06
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	June 20, 2005
<b>SUBJECT</b>	Exemptions for Government Financed Projects	<b>Section</b>	Enforcement
		<b>Last Revised</b>	3-12-97

### **OBJECTIVE AND INTENT:**

To ensure that a government financed project, which may involve the removal of coal, meets the exemption criteria of Part 4 VAC 25-130-707 of the regulations and complies with the DMME/DMLR/DM “Guidelines for Coal Removal Associated with Government Financed Construction”.

### **PROCEDURES:**

#### **General - Determining Regulatory Requirements**

Upon receipt of a written request for site exemption from DMME mine licensing and permitting regulations, a DMLR/DM team consisting of at least one representative from DM and the DMLR Reclamation Program Manager (RPM) will –

1. Review the request and all applicable data; visit the site if necessary; and, make the determination as to whether an exemption is warranted.
2. Within seven working days, inform the party (ies), in writing, of the exemption determination.

#### **DMLR Initiates Exemption Determination Process -**

A Field Inspector may come upon a construction project, which may plan to remove or is removing coal. If the extraction of coal is incidental to a government financed construction project, it is exempt from the coal surface mining regulatory program as long as the operations comply with the terms and conditions of the project.

When finding a project that is not under a DMLR permit, or has not obtained an exemption determination, the Inspector should initiate an inspection of the site (see Procedure #2.1.03) to determine whether the project is exempt from the Act. The Inspector shall contact and coordinate with DM to determine whether a mine license application for the site has been submitted or is required.

Whenever the project removes more than 250 tons of coal, certain documents must be maintained at the project site. The documents should include the information required by 4 VAC 25-130-707.12 of the regulations.

In reviewing the project information, the Inspector should focus on the documents which:

- describe the construction project;
- set forth the exact location of the construction, right of way, or boundaries of the area which will be directly affected by the construction;

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- lists the government agency which is financing the project (noting the kind and amount of public financing, and the percentage of the entire construction costs represented by government financing);
- identifies the government agency contact person; and,
- may indicate the anticipated amount of coal which may be removed during the project; whether such coal would be commercially sold; and whether the coal removal is necessary for the project completion.

The Inspector should contact the person representing the government financing authority for verification of the information and to ensure any coal extraction does not go beyond the scope of the project. The Inspector shall monitor the project at least monthly to verify that the operation continues to meet the exemption criteria. These reviews shall be documented in an inspection report (**DMLR-ENF-044**) and forwarded to the Area Supervisor.

If the Inspector's investigation reveals that the construction company's coal extraction is no longer exempt, action shall be initiated per Procedure #2.1.03.

#### **Request for Exemption Determination Submitted to DMLR -**

Each request for an exemption determination shall be referred to the DMLR/DM team. Upon receipt of the request, DMLR's representative, the RPM in coordination with DM,

- shall determine whether the request is complete.
- may request additional information from the party requesting the exemption.
- shall notify the Division Director, the Chief Engineer, Inspector, OSM and other interested parties (including appropriate government agencies).

The DMLR Inspector shall, **within two days**, conduct an onsite investigation of the proposed exemption site to:

- determine if the site meets the exemption criteria (4 VAC 25-130-707.11 and 4 VAC 25-130-707.12; and,
- collect any available data that would assist the DMLR's determination of exemption eligibility, such as -
  1. documentation of the site conditions.
  2. amount of government financing (and type).

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3. projected cost of project.
4. whether the government authorization has been given to proceed with the project.
5. amount of coal removed or to be removed during the project term; where the coal is or will be sold; whether coal removal meets the engineering necessity for the project; and whether the coal is located within the project's boundaries.

The Inspector shall submit the data and onsite investigation report (**DMLR-ENF-044**) to the RPM. The investigation report shall include the Inspector's finding or recommendation as to whether the site does or does not meet the exemption criteria.

#### **Exemption Review Process -**

The RPM shall:

- review the request and the Inspector's finding or recommendation as to whether the exemption is permissible for the site under the Act and regulations.
- provide notice of the DMLR's intent to consider the request to all parties with an identified interest in the exemption determination (may include state and local agencies, appropriate Planning Districts, the mineral owner, the surface owner, the state OSM field office, the site contractor, utilities, or others).

The notice to interested parties may be oral (but documented in the exemption request file) or in writing. The notice shall explain the person's right to submit written comments or concerns to the Division Director or RPM within a reasonable time period (within 15 workdays, unless unique circumstances require an extended period).

Evaluation of data and comments - The RPM, prior to preparing the Division Director's written decision to approve or disapprove the exemption request:

- shall consider the comments submitted from the DM, DMLR, and any interested parties.
- shall consider the project documentation or reports provided by the funding agency(ies).
- may request additional information from any involved party or require additional investigation by the Inspector.
- shall require that an "engineering necessity determination" be prepared by appropriate staff.

#### **Exemption Determination -**

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Once the RPM receives and considers the additional information requested from the interested parties and the engineering necessity determination, a final written determination to approve or disapprove the exemption request shall be prepared for the Division Director's signature. If the operation is not determined to be exempt, the applicant shall be required to obtain a Chapter 19 permit for the site.

After the final determination is signed by the Division Director, the RPM shall immediately copy the applicant with the agency's decision. A copy of the determination shall be concurrently mailed to each interested party.

The final determination shall be made within seven working days from receipt of any additional information.

#### **Exemption Approval/Inspection -**

The Inspector will be copied with the exemption determination letter, and for each exempt site shall:

- conduct at least monthly inspections of the site to verify that the project is being conducted in accordance with 4 VAC 25-130-707.11 and 4 VAC 25-130-707.12 and the exemption justification submitted to and approved by the DMLR.
- document site conditions (mining equipment present and areas of coal removal); and provide a summary of the project progress and cost, amount and type of government funding, total tonnage of coal removed, and revenues received from the sale of the coal.
- respond to citizen complaints concerning the project per Procedure #3.1.06. The Inspector shall also refer the complainant to the funding agency(ies), and communicate the complaint directly to the funding agency(ies).
- report to the RPM of any instance where the site activities or conditions appear to be inconsistent with the exemption determination.

Should the Inspector determine that coal removal at the site has exceeded the limits anticipated in the exemption determination, and the coal removal is not an engineering necessity for the project (assistance may be obtained from the Chief Engineer, or technical personnel), immediate action to halt the coal removal operation shall be taken. (see Procedures # 2.1.03, 3.3.01, and 3.3.08).

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Final Inspection -

The Inspector shall conduct a close out inspection of the project once coal removal is completed. The inspection report (**DMLR-ENF-044**) shall document the total project cost, amount of public financing, and the total revenues received from the coal removed.

Record keeping - The Area Supervisor shall forward a copy of each inspection report concerning the exempted site to the RPM. The Inspector shall retain a copy of the inspection reports for future reference.

The RPM shall maintain a file of each exemption request received by the DMLR. The record shall include, but not be limited to:

1. the exemption request, and the current status of the exemption.
2. a specific location description of the site.
3. identification of the government financing agency(ies) and respective contact persons.
4. a list of all interested persons notified.
5. documentation or copies of comments, concerns, and data the DMLR reviewed (both internal and material from interested parties).
6. the “engineering necessity determination” and supporting rationale.
7. the DMLR determination letter.
8. a copy of each inspection and close out report completed and submitted by the Inspector.
9. all other documents or materials generated or collected relative to the project.

The RPM shall ensure each file is maintained and updated - up to and including the submittal of the Inspector’s close out report.

After receipt of the close out report, the RPM shall review the file and indicate in writing as to whether the agency met its obligations in the matter. The file shall then be forwarded to Central Files.